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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Maria Antonia Barrera,

Plaintiff,

v.

City of Lynwood

Defendant.

Case: 2:15-CV-05470-JFW-PJW

**Joint Separate Statement Regarding
 Plaintiff's Offer of Proof for Expert Paul
 Bishop**

Date: May 24, 2016

Time: 8:30 a.m.

Ctrlm: 16

Opinion 1

Both the main lobby doors and the South entrance to the Lynwood City Hall building are equipped with automatic door openers that are activated by push plates on the exterior and interior of the building. If the doors must be opened manually, the main entrance doors require approximately 8 pounds of opening force, and the South entrance doors require approximately 8 – 10 pounds of opening force. On March 14, 2016, there was no furniture or other object obstructing access to any of the push plates.

Report Citation: Page 7, Observation 2; Page 12, Application of Standards 2

Relevance: Plaintiff will testify that on the dates of her visits, the automatic door opener was blocked by a couch and unreachable to her. The clear floor space in front of such

1 openers, as well as the opening force poundage on doors, is governed by the Americans with
2 Disability Act Standards (ADAS). Mr. Bishop's opinion is relevant to whether the placement
3 of the couch denied Plaintiff programmatic access to city programs.

4 **Documents Relied On:** None. Personal inspection conducted.

5 **Non-Proffering Party's Position:** Mr. Bishop's testimony regarding the location
6 and/or depth of the couch, or the standards applicable to that couch, lacks foundation because
7 it is based solely upon the observations of Evens Louis, a "field investigator" employed by
8 plaintiff's counsel. To the extent that Mr. Bishop's opinions are based on the observations of
9 other persons, it is inadmissible hearsay and no exception to that rule applies. Further, this
10 testimony is irrelevant because Mr. Bishop has admitted that the couch did not exceed 24" in
11 depth.

12 Both Mr. Bishop's testimony and the testimony of Plaintiff regarding the force required
13 to open either the front or south entrance doors to City Hall lack foundation, as no statement
14 of how that force was measured.

15 Because of the lack of foundation and/or personal knowledge with respect to all of Mr.
16 Bishop's proposed testimony, his testimony is confusing and misleading and more prejudicial
17 than probative of plaintiff's claims.

18 **Proffering Party's Position:** As this opinion reflects, Mr. Bishop will testify as to
19 what he personally saw on the date of his visit, not what Mr. Louis saw. As an expert witness,
20 it is appropriate for Mr. Bishop to provide his opinion to a hypothetical situation and in this
21 way he may testify that a piece of furniture of a certain width, for example 24 inches, placed
22 in front of the door opener, could be a barrier to access to an individual with disabilities
23 comparable to Plaintiff.

24 As noted in his report, Mr. Bishop utilized a door pressure gauge during his
25 investigation.

26
27 **Opinion 2**

28 The lobby has an Information Counter that is more than 36" long, extends the full depth

1 of the main counter and has a lowered section that is 30-1/2" above the floor. Across the
2 lobby a few feet away are another couple of counters that are 43" above the floor. Signage is
3 provided at these counters to indicate that utility and City bills can be paid at these counters.
4 Additional signage is provided to indicate that credit cards are accepted at these counters as a
5 form of payment. The employees that staff these counters are protected behind plexiglass
6 barriers. There is no signage at the Information Counter indicating that bills can be paid at that
7 location, nor is there any signage indicating that credit cards can be used at that counter. The
8 employee who staffed this counter was not protected behind any type of barrier. Barriers of
9 the type provided at the other counters are typically used to protect employees when cash or
10 other financial instruments are handled.

11 **Report Citation:** Page 8, Observation 3; Page 12, Application of Standards 3

12 **Relevance:** The counter height, depth, and width, as well as the use of directional
13 signage, is governed by the Americans with Disability Act Standards (ADAS). Mr. Bishop's
14 opinion is relevant to whether the configuration of counter at the Cashier's Counter, combined
15 with the lack of directional signage indicating payments can be processed at the Information
16 Counter, denied Plaintiff programmatic access to city programs.

17 **Document Relied On:** None. Personal inspection conducted.

18 **Non-Proffering Party's Position:** Mr. Bishop's testimony regarding the dimensions
19 of the Information Counter is relevant to show that Lynwood offered an equivalent alternative
20 to the Cashier Counters.

21 His testimony regarding the existence of protective barriers or signage on either the
22 transaction counters or the Information Counter is irrelevant, because there are no
23 requirements for either to be in place. This testimony is also confusing and/or misleading, and
24 more prejudicial than probative of plaintiff's claims; the presence or absence of protective
25 barriers or signage is not dispositive of plaintiff's claims.

26 To the extent that Mr. Bishop's opinions are based on the observations of other
27 persons, it is inadmissible hearsay and no exception to that rule applies.

1 **Proffering Party's Position:** Mr. Bishop's testimony regarding the protective barriers
 2 is relevant to contradict Defendant's affirmative defense that payments are regularly accepted
 3 at the Information Counter, as the Information Counter is equipped very differently from the
 4 Cashiers Counter. Defendant has failed to identify any way in which this opinion is based on
 5 the observations of others.

6
 7 **Opinion 3**

8 Assuming that all financial transactions that currently occur at the two secured Cashier
 9 Counters across the lobby can also be processed at the unsecured Information Counter, a
 10 directional sign should be installed. The sign should be placed at a minimum of two locations
 11 so that visitors entering the lobby from any direction are informed that financial transactions
 12 can occur at either location. The cost for a couple of directional signs would be no more than a
 13 few hundred dollars and could be procured from a local sign company.

14 **Report Citation:** Page 13, Application of Standards 3

15 **Relevance:** Defendant has a duty to operate each service, program, or activity so that
 16 the service, program, or activity, when viewed in its entirety, is readily accessible to and
 17 usable by individuals with disabilities, except where doing so would result in a fundamental
 18 alteration in the nature of a service, program, or activity or in undue financial and
 19 administrative burdens. Mr. Bishop's opinion on the remedy to lack of accessibility is relevant
 20 to whether or not Defendant is excused due to a fundamental alteration in the service or undue
 21 financial or administrative burden.

22 **Document Relied On:** None. Personal inspection conducted.

23 **Non-Proffering Party's Position:** Mr. Bishop's testimony regarding signage is
 24 irrelevant, because there is no requirement under the Americans with Disabilities Act that
 25 signage be provided with respect to the Information Counter or its ability to accept payments
 26 of the same kind as can be accepted at the transaction counters. Because of its complete lack
 27 of relevance, this testimony is also more prejudicial than probative of plaintiff's claims, and is
 28 confusing and/or misleading.

1 To the extent that Mr. Bishop's opinions are based on the observations of other
2 persons, it is inadmissible hearsay and no exception to that rule applies.

3 **Proffering Party's Position:** Plaintiff will testify that in her many visits, no one
4 informed her that she could pay her bills at the Information Counter. The lack of signage
5 supports Plaintiff's contention that she could not have independently known this was an
6 option. It is also further evidence that the Information Counter was not intended for nor
7 regularly used to accept payments.

8
9 **Opinion 4**

10 The improvements at Lynwood City Hall clearly don't comply with the new
11 construction provisions of the 2010 ADAS or 2013 CBC. The City of Lynwood has not
12 complied with Title II of the ADA with regards to providing accessible entrance doors and a
13 transaction counter at Lynwood City Hall. It is also my opinion that removing the barriers
14 cited above would not represent an undue financial or administrative burden to the City of
15 Lynwood, due to the minimal cost and effort involved with the recommended barrier removal.

16 **Report Citation:** Page 13, Application of Standards 3

17 **Relevance:** Defendant has a duty to operate each service, program, or activity so that
18 the service, program, or activity, when viewed in its entirety, is readily accessible to and
19 usable by individuals with disabilities, except where doing so would result in a fundamental
20 alteration in the nature of a service, program, or activity or in undue financial and
21 administrative burdens. Mr. Bishop's opinion on the remedy to lack of accessibility is relevant
22 to whether or not Defendant is excused due to a fundamental alteration in the service or undue
23 financial or administrative burden.

24 **Document Relied On:** None. Personal inspection conducted.

25 **Non-Proffering Party's Position:** Mr. Bishop's opinions lack foundation, are
26 irrelevant to the determination of plaintiff's claims, are confusing and/or misleading to the
27 trier of fact, and are more prejudicial than probative of plaintiff's claims. Mr. Bishop's
28 opinion ignores the plain reality that no actual barriers existed to plaintiff's access to either

1 City Hall itself or to the bill payment functions contained therein.

2 To the extent that Mr. Bishop's opinions are based on the observations of other
3 persons, it is inadmissible hearsay and no exception to that rule applies.

4 **Proffering Party's Position:** The foundation of this final opinion is found in the
5 proceedings opinions, as well as Mr. Bishop's report. Plaintiff disagrees that no actual barriers
6 existed.

7
8
9 Dated: May 18, 2016

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10 By: /s/ Christina Sosa

11 Christina Sosa
12 Attorney for Plaintiff

13
14 Dated: May 18, 2016

15 By: /s/ Andrew Smith

16 ANDREW SMITH
17 Attorney for Defendant
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